



STATE OF INDIANA

MICHAEL R. PENCE, Governor

**PUBLIC ACCESS COUNSELOR
LUKE H. BRITT**

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

March 9, 2015

Ms. Rae Jean Seymour
538 Arch St.
Lawrenceburg, IN 47025

Re: Formal Complaint 15-FC-30; Alleged Violation of the Access to Public Records Act by Lawrenceburg Main Street

Dear Ms. Seymour,

This advisory opinion is in response to your formal complaint alleging the Lawrenceburg Main Street ("LMS") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* LMS has responded to your complaint via Mr. John Davis; Ms. Patricia Krider; and Mr. Matthew L. McDaniel, Esq. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on January 27, 2015.

BACKGROUND

Your complaint dated January 29, 2015 alleges Lawrenceburg Main Street violated the Access to Public Records Act by refusing to release requested information and improperly charging you a copy fee.

On January 20, 2015, you requested from LMS a record of all grants distributed by LMS as well as all expenditures. You did not receive a response within seven (7) days. After you called for a progress update, it was denied over the phone; however, you were not given a reason for the denial.

On January 29, 2015, you requested a copy of the E-1 and copies of all meeting minutes from LMS. You were provided these records within 24 hours; however, you were charged \$1.00 per page.

On February 16, 2015, LMS responded to your complaint. LMS contends it fulfilled your second request on January 30, 2015 and fulfilled your first request on February 6, 2015. LMS contends records were never denied. Further, LMS contends a \$17.00 copy fee is reasonable considering the "wide cache" of information you requested. LMS notes you

did not object to the information provided and requests if you are unsatisfied, that LMS be informed.

ANALYSIS

The public policy of the APRA states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” See Ind. Code § 5-14-3-1. Lawrenceburg Main Street is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy LMS’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

A request for records may be oral or written. See Ind. Code § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. See Ind. Code § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. See Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

LMS considered your January 20, 2015 request to be non-specific and did not meet the standards of reasonable particularity as required by the APRA. LMS considers this justification for the delay in acknowledgement, however, a public records request must be acknowledged with 24 hours of an in-person request and within seven (7) days of a written request. It may be true your request was not reasonably specific, however, that is not justification for failing to acknowledge the request. It is my understanding you have received these documents in the meantime, it is my sincere hope they satisfy your request.

It appears as if the January 29, 2015 request has also been fulfilled, however, you take exception with the fee charged - \$1.00 per page. LMS justifies this charge by referencing the amount of documents requested. Ind. Code § 5-14-3-8 sets the fee schedule for black and white copies at \$.10 per page and no more. This would indicate the produced documents would be numbered at 170. If this is not the case, you have been charged too much.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor that Lawrenceburg Main Street has violated the Access to Public Records Act by not acknowledging receipt of your public records request and has potentially violated the APRA by charging a fee in excess of \$.10 per page.

Regards,

A handwritten signature in black ink, appearing to be 'LHB', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor

Cc: Mr. John Davis; Ms. Patricia Krider; Mr. Matthew L. McDaniel, Esq.